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United States Bankruptcy Court
Eastern District Of Washington

In Re:

HW PARTNERS, LLC

Main Case Number: 11-03366

Debtors.

LESTER L. HENDRICKSON, and
BETSYDIANNE HENDRICKSON,
husband and wife,

Adversary Number: 11-80317

Plaintiff(s),

vs.

HW PARTNERS, a Washington
limited liability company; JASON D.
HUNTLEY, in his individual
capacity; JASON D. HUNTLEY and
KIRSCHTEN M. HUNTLEY,
husband and wife; JUSTIN M.
WYLIE, in his individual capacity;
JUSTIN M. WYLIE and
ELIZABETH ANNE YOUNG
WYLIE, husband and wife;
HUNTLEY FAMILY
INVESTMENTS, LLC, a
Washington limited liability
company; HUNTLEY THATCHER,
ELLSWORTH, LTD., a Colorado
corporation; WESTMOORE
LENDING OPPORTUNITY FUND,
LLC, a California limited liability
company; MKA REAL ESTATE
QUALIFIED FUND I, LLC, a
California limited liability company;
and PACIFIC NORTHWEST TITLE
INSURANCE COMPANY, INC.
d/b/a WALLA WALLA TITLE
COMPANY, a Washington
corporation

**Clarification and Modification of Memorandum
(Doc. #540)**

Defendants.

Clarification and Modification
of Memorandum (Doc. #540)
06/11/14

1
2 This matter came before the Court on June 3, 2014, upon MKA's Presentment of Order (Doc.
3
4 #549), "Plaintiffs' Memorandum in Response to Defendant MKA's Proposed Order and in Support
5 of Motion for Amended Findings" (Doc. #554), and Defendant MKA Real Estate Qualified Fund I,
6
7 LLC's "Opposition to Plaintiffs' Motion for Amended Findings." (Doc. # 556) The Court having
8 heard argument makes the following clarifications and modifications to the Memorandum (Doc.
9
10 #540):

11 I. The "Memorandum" (Doc. #483) decided on summary judgment motions the priority
12
13 dispute between two secured parties. The decision was based on uncontested facts. The
14 "Memorandum" (Doc. #540) decided a dispute between a secured creditor of HWP and an unsecured
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16 creditor of HWP. It was decided after a bench trial of the contested facts. These decisions applied
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18 different standards dependent on the posture in which the issues were presented to the Court,
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20 summary judgment motion (Doc. #483) or contested bench trial (Doc. #540). To eliminate any
21
22 possible confusion on these points, the Court strikes the following language from Doc. #540 p.1 line
23
24 27 thru p.2 line 4;

25 The Court's "Findings of Uncontested Facts Supporting Summary Judgment
26
27 Decision," (Doc. #482) "Memorandum" (Doc. #483), and the matters contained in the
28 parties proposed pretrial order (Doc. #515 pp. 2-11) are hereby incorporated into and
made a part of this opinion."

Clarification and Modification
of Memorandum (Doc. #540)
06/11/14

1 The following language is substituted in place of the stricken language:

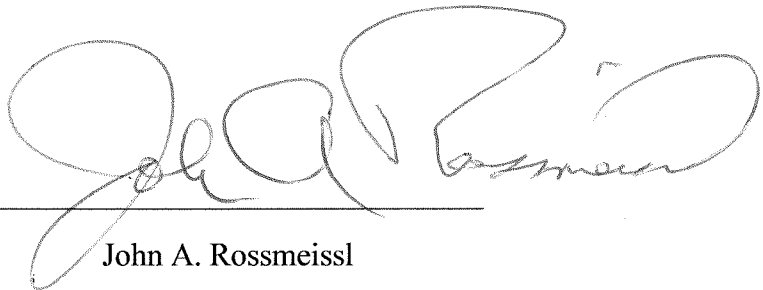
2 The matters contained in the parties agreed pretrial order (Doc. #515 pp. 2-11) are
3 incorporated and made a part of this opinion.

4 **II.** The trial in this adversary proceeding adjudicated the counter claims and cross claims
5 contained in MKA's answer. (Doc. # 29) This Court's ruling judicially enforced MKA's security
6 interest in the July 31, 2007 note between HWP and Westmoore, and foreclosed the mortgage on
7 Estate No. 1 assigned to MKA to secure that obligation. RCW 62A9-601 (a)(1). This makes
8 explicit what was implicit in the "Memorandum." (Doc. #540).

9 **III.** The dispute over the right to the proceeds of Estate No. 1 is between MKA holding an
10 unperfected interest in the July 31, 2007 note and an assignment of real estate mortgage securing that
11 note and Hendricksons, unsecured creditors. MKA is entitled to the proceeds of Estate No. 1
12 whether personal property law (RCW 62A.9A-201 (a)) or the real property law is controlling. (RCW
13 61.16.010; RCW 65.08.060; RCW 65.08.070).

14 The "Memorandum" (Doc. #540) remains in full force and effect except as specifically
15 modified or clarified herein.

16
17 Done this 11th day of June, 2014

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22 
23 John A. Rossmeissl

24 Bankruptcy Judge

25
26
27 Clarification and Modification
28 of Memorandum (Doc. #540)
06/11/14